

Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions

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ANNEX I

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Acceptance of deposits and other repayable funds
2. Lending⁽¹⁾
3. Financial leasing
4. Money transmission services
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)
6. Guarantees and commitments
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, certificates of deposit, etc.)
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest-rate instruments;
 - (e) transferable securities
8. Participation in securities issues and the provision of services related to such issues
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings
10. Money broking
11. Portfolio management and advice
12. Safekeeping and administration of securities
13. Credit reference services
14. Safe custody services

[^{F1}The services and activities provided for in Section A and B of Annex I of [^{X1}Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments]⁽²⁾ when referring to the financial instruments provided for in Section C of Annex I of that Directive are subject to mutual recognition according to this Directive.]

Editorial Information

- X1** Substituted by [Corrigendum to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC \(Official Journal of the European Union L 145 of 30 April 2004\).](#)

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Textual Amendments

- F1** Inserted by [Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.](#)

ANNEX II

CLASSIFICATION OF OFF-BALANCE-SHEET ITEMS

Full risk

- Guarantees having the character of credit substitutes,
- Acceptances,
- Endorsements on bills not bearing the name of another credit institution,
- Transactions with recourse,
- Irrevocable standby letters of credit having the character of credit substitutes,
- Assets purchased under outright forward purchase agreements,
- Forward forward deposits,
- The unpaid portion of partly-paid shares and securities,
- Other items also carrying full risk.

Medium risk

- Documentary credits issued and confirmed (see also medium/low risk),
- Warranties and indemnities (including tender, performance, customs and tax bonds) and guarantees not having the character of credit substitutes,
- Asset sale and repurchase agreements as defined in Article 12(3) and (5) of Directive 86/635/EEC,
- Irrevocable standby letters of credit not having the character of credit substitutes,
- Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of more than one year,
- Note issuance facilities (NIFs) and revolving underwriting facilities (RUFs),
- Other items also carrying medium risk.

Medium/low risk

- Documentary credits in which underlying shipment acts as collateral and other self-liquidating transactions,
- Other items also carrying medium/low risk.

Low risk

- Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of up to and including one year or which may be cancelled unconditionally at any time without notice,
- Other items also carrying low risk.

The Member States undertake to inform the Commission as soon as they have agreed to include a new off-balance-sheet item in any of the last indents under each category of risk. Such items will be definitively classified at Community level once the procedure laid down in Article 60 has been completed.

ANNEX III

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THE TREATMENT OF OFF-BALANCE-SHEET ITEMS

1. CHOICE OF THE METHOD

To measure the credit risks associated with the contracts listed in points 1 and 2 of Annex IV, credit institutions may choose, subject to the consent of the competent authorities, one of the methods set out below. Credit institutions which have to comply with Article 6(1) of Directive 93/6/EEC⁽³⁾ must use method 1 set out below. To measure the credit risks associated with the contracts listed in point 3 of Annex IV all credit institutions must use method 1 set out below.

2. METHODS

Method the 'mark to market' approach

1:

by attaching current market values to contracts (mark to market), the current replacement cost of all contracts with positive values is obtained.

to obtain a figure for potential future credit exposure⁽⁴⁾, the notional principal amounts or underlying values are multiplied by the following percentages:

TABLE 1⁰⁰

Residual maturity^c	Interest-rate contracts	Contracts concerning foreign-exchange rates and gold	Contracts concerning equities	Contracts concerning precious metals except gold	Contracts concerning commodities other than precious metals
One year or less	0 %	1 %	6 %	7 %	10 %
Over one year, less than five years	0,5 %	5 %	8 %	7 %	12 %
Over five years	1,5 %	7,5 %	10 %	8 %	15 %

a Contracts which do not fall within one of the five categories indicated in this table shall be treated as contracts concerning commodities other than precious metals.

b For contracts with multiple exchanges of principal, the percentages have to be multiplied by the number of remaining payments still to be made according to the contract.

c For contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the residual maturity would be equal to the time until the next reset date. In the case of interest-rate contracts that meet these criteria and have a remaining maturity of over one year, the percentage shall be no lower than 0,5 %.

For the purpose of calculating the potential future exposure in accordance with step (b) the competent authorities may allow credit institutions until 31 December 2006 to apply the following percentages instead of those prescribed in Table 1 provided that the institutions make use of the option set out in Article 11a of Directive 93/6/EEC for contracts within the meaning of paragraph 3(b) and (c) of Annex IV:

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TABLE 1A

Residual maturity	Precious metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
One year or less	2 %	2,5 %	3 %	4 %
Over one year, less than five years	5 %	4 %	5 %	6 %
Over five years	7,5 %	8 %	9 %	10 %

the sum of current replacement cost and potential future credit exposure is multiplied by the risk weightings allocated to the relevant counterparties in Article 43.

Method 2: the ‘original exposure’ approach

the notional principal amount of each instrument is multiplied by the percentages given below:

TABLE 2

Original maturity^a	Interest-rate contracts	Contracts concerning foreign-exchange rates and gold
One year or less	0,5 %	2 %
More than one year but not exceeding two years	1 %	5 %
Additional allowance for each additional year	1 %	3 %

^a In the case of interest-rate contracts, credit institutions may, subject to the consent of their competent authorities, choose either original or residual maturity.

the original exposure thus obtained is multiplied by the risk weightings allocated to the relevant counterparties in Article 43.

For methods 1 and 2 the competent authorities must ensure that the notional amount to be taken into account is an appropriate yardstick for the risk inherent in the contract. Where, for instance, the contract provides for a multiplication of cash flows, the notional amount must be adjusted in order to take into account the effects of the multiplication on the risk structure of that contract.

3. CONTRACTUAL NETTING (CONTRACTS FOR NOVATION AND OTHER NETTING AGREEMENTS)

(a) Types of netting that competent authorities may recognise

For the purpose of this point 3 ‘counterparty’ means any entity (including natural persons) that has the power to conclude a contractual netting agreement.

The competent authorities may recognise as risk-reducing the following types of contractual netting:

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- (i) bilateral contracts for novation between a credit institution and its counterparty under which mutual claims and obligations are automatically amalgamated in such a way that this novation fixes one single net amount each time novation applies and thus creates a legally binding, single new contract extinguishing former contracts;
- (ii) other bilateral agreements between a credit institution and its counterparty.
- (b) Conditions for recognition

The competent authorities may recognise contractual netting as risk-reducing only under the following conditions:

- (i) a credit institution must have a contractual netting agreement with its counterparty which creates a single legal obligation, covering all included transactions, such that, in the event of a counterparty's failure to perform owing to default, bankruptcy, liquidation or any other similar circumstance, the credit institution would have a claim to receive or an obligation to pay only the net sum of the positive and negative market-to-market values of included individual transactions;
- (ii) a credit institution must have made available to the competent authorities written and reasoned legal opinions to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would, in the cases described under (i), find that the credit institution's claims and obligations would be limited to the net sum, as described in (i), under:
 - the law of the jurisdiction in which the counterparty is incorporated and, if a foreign branch of an undertaking is involved, also under the law of the jurisdiction in which the branch is located,
 - the law that governs the individual transactions included, and
 - the law that governs any contract or agreement necessary to effect the contractual netting;
- (iii) a credit institution must have procedures in place to ensure that the legal validity of its contractual netting is kept under review in the light of possible changes in the relevant laws.

The competent authorities must be satisfied, if necessary after consulting the other competent authorities concerned, that the contractual netting is legally valid under the law of each of the relevant jurisdictions. If any of the competent authorities are not satisfied in that respect, the contractual netting agreement will not be recognised as risk-reducing for either of the counterparties.

The competent authorities may accept reasoned legal opinions drawn up by types of contractual netting.

No contract containing a provision which permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulter, even if the defaulter is a net creditor (a 'walkaway' clause), may be recognised as risk-reducing.

The competent authorities may recognise as risk-reducing contractual-netting agreements covering foreign-exchange contracts with an original maturity of 14 calendar days or less written options or similar off-balance-sheet items to which this Annex does not apply because they bear only a negligible or no credit risk. If, depending on the positive or negative market value of these contracts, their inclusion in another netting agreement can result in an increase or decrease of the capital requirements, competent authorities must oblige their credit institution to use a consistent treatment.

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(c) Effects of recognition

(i) Contracts for novation

The single net amounts fixed by contracts for novation, rather than the gross amounts involved, may be weighted. Thus, in the application of method 1, in

- step (a): the current replacement cost, and in
- step (b): the notional principal amounts or underlying values

may be obtained taking account of the contract for novation. In the application of method 2, in step (a) the notional principal amount may be calculated taking account of the contract for novation; the percentages of Table 2 must apply.

(ii) Other netting agreements

In application of method 1:

- in step (a) the current replacement cost for the contracts included in a netting agreement may be obtained by taking account of the actual hypothetical net replacement cost which results from the agreement; in the case where netting leads to a net obligation for the credit institution calculating the net replacement cost, the current replacement cost is calculated as '0',
- in step (b) the figure for potential future credit exposure for all contracts included in a netting agreement may be reduced according to the following equation:

$$PCE_{red} = 0,4 * PCE_{gross} + 0,6 * NGR * PCE_{gross}$$

where:

- PCE_{red} = the reduced figure for potential future credit exposure for all contracts with a given counterparty included in a legally valid bilateral netting agreement,
- PCE_{gross} = the sum of the figures for potential future credit exposure for all contracts with a given counterparty which are included in a legally valid bilateral netting agreement and are calculated by multiplying their notional principal amounts by the percentages set out in Table 1,
- NGR = 'net-to-gross ratio': at the discretion of the competent authorities either:

- (i) separate calculation: the quotient of the net replacement cost for all contracts included in a legally valid bilateral netting agreement with a given counterparty (numerator) and the gross replacement cost for all contracts included in a legally valid bilateral netting agreement with that counterparty (denominator), or
- (ii) aggregate calculation: the quotient of the sum of the net replacement cost calculated on a bilateral basis for all counterparties taking into account the contracts included in legally valid netting agreements (numerator) and the gross replacement cost for all contracts

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included in legally valid netting agreements (denominator).

If Member States permit credit institutions a choice of methods, the method chosen is to be used consistently.

For the calculation of the potential future credit exposure according to the above formula perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts. Perfectly matching contracts are forward foreign-exchange contracts or similar contracts in which a notional principal is equivalent to cash flows if the cash flows fall due on the same value date and fully or partly in the same currency.

In the application of method 2, in step (a)

- perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts, the notional principal amounts are multiplied by the percentages given in Table 2,
- for all other contracts included in a netting agreement, the percentages applicable may be reduced as indicated in Table 3:

TABLE 3

Original maturity^a	Interest-rate contracts	Foreign-exchange contracts
One year or less	0,35 %	1,5 %
More than one year but not more than two years	0,75 %	3,75 %
Additional allowance for each additional year	0,75 %	2,25 %

^a In the case of interest-rate contracts, credit institutions may, subject to the consent of their competent authorities, choose either original or residual maturity.

ANNEX IV

TYPES OF OFF-BALANCE-SHEET ITEMS

1. **Interest-rate contracts:**
 - (a) single-currency interest rate swaps;
 - (b) basis-swaps;
 - (c) forward rate agreements;
 - (d) interest-rate futures;
 - (e) interest-rate options purchased;
 - (f) other contracts of similar nature.
2. **Foreign-exchange contracts and contracts concerning gold:**
 - (a) cross-currency interest-rate swaps;

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- (b) forward foreign-exchange contracts;
 - (c) currency futures;
 - (d) currency options purchased;
 - (e) other contracts of a similar nature;
 - (f) contracts concerning gold of a nature similar to (a) to (e).
3. **Contracts of a nature similar to those in points 1(a) to (e) and 2(a) to (d) concerning other reference items or indices concerning:**
- (a) equities;
 - (b) precious metals except gold;
 - (c) commodities other than precious metals;
 - (d) other contracts of a similar nature.

ANNEX V

PART A

REPEALED DIRECTIVES TOGETHER WITH THEIR SUCCESSIVE AMENDMENTS

(referred to in Article 67)

- Council Directive 73/183/EEC
- Council Directive 77/780/EEC
 - Council Directive 85/345/EEC
 - Council Directive 86/137/EEC
 - Council Directive 86/524/EEC
 - Council Directive 89/646/EEC
 - Directive 95/26/EC of the European Parliament and of the Council,
only Article 1, first indent, Article 2(1), first indent and (2), first
indent, Article 3(2), Article 4(2), (3) and (4), as regards references
to Directive 77/780/EEC, and (6), and Article 5, first indent
- Council Directive 96/13/EC
- Directive 98/33/EC of the European Parliament and of the Council
- Council Directive 89/299/EEC
 - Council Directive 91/633/EEC
 - Council Directive 92/16/EEC
 - Council Directive 92/30/EEC
- Council Directive 89/646/EEC
 - Council Directive 92/30/EEC
 - Directive 95/26/EC of the European Parliament and of the Council
only Article 1, first indent
- Council Directive 89/647/EEC
 - Commission Directive 91/31/EEC

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Council Directive 92/30/EEC
 Commission Directive 94/7/EC
 Commission Directive 95/15/EC
 Commission Directive 95/67/EC
 Directive 96/10/EC of the European Parliament and of the Council
 Directive 98/32/EC of the European Parliament and of the Council
 Directive 98/33/EC of the European Parliament and of the Council (Article 2)
 Council Directive 92/30/EEC
 Council Directive 92/121/EEC

PART B

DEADLINES FOR IMPLEMENTATION

(referred to in Article 67)

Directive		Deadline for implementation
73/183/EEC (OJ L 194, 16.7.1973, p. 1)		2.1.1975 ^a
77/780/EEC (OJ L 322, 17.12.1977, p. 30)		15.12.1979
85/345/EEC (OJ L 183, 16.7.1985, p. 19)		15.7.1985
86/137/EEC (OJ L 106, 23.4.1986, p. 35)		—
86/524/EEC (OJ L 309, 4.11.1986, p. 15)		31.12.1986
89/299/EEC (OJ L 124, 5.5.1989, p. 16)		1.1.1993
89/646/EEC (OJ L 386, 30.12.1989, p. 1)	Article 6(2),	1.1.1990
	other provisions	1.1.1993
89/647/EEC (OJ L 386, 30.12.1989, p. 14)		1.1.1991
91/31/EEC (OJ L 17, 23.1.1991, p. 20)		31.3.1991
91/633/EEC (OJ L 339, 11.12.1991, p. 16)		31.12.1992
92/16/EEC (OJ L 75, 31.3.1992, p. 48)		31.12.1992

^a However, as regards the abolition of the restriction referred to in Article 3(2)(g), the Netherlands was allowed to defer implementation until 2 July 1977. (See: Article 8, second subparagraph of Directive 73/183/EEC).

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92/30/EEC (OJ L 110, 28.4.1992, p. 52)		31.12.1992
92/121/EEC (OJ L 29, 5.2.1993, p. 1)		31.12.1993
94/7/EC (OJ L 89, 6.4.1994, p. 17)		25.11.1994
95/15/EC (OJ L 125, 8.6.1995, p. 23)		30.9.1995
95/26/EC (OJ L 168, 18.7.1995, p. 7)		18.7.1996
95/67/EC (OJ L 314, 28.12.1995, p. 72)		1.7.1996
96/10/EC (OJ L 85, 3.4.1996, p. 17)		30.6.1996
96/13/EC (OJ L 66, 16.3.1996, p. 15)		15.4.1996
98/32/EC (OJ L 204, 21.7.1998, p. 26)		21.7.2000
98/33/EC (OJ L 204, 21.7.1998, p. 29)		21.7.2000

a However, as regards the abolition of the restriction referred to in Article 3(2)(g), the Netherlands was allowed to defer implementation until 2 July 1977. (See: Article 8, second subparagraph of Directive 73/183/EEC).

ANNEX VI

CORRELATION TABLE

This Directive	Directive 77/780/EEC	Directive 89/299/EEC	Directive 89/646/EEC	Directive 89/647/EEC	Directive 92/30/EEC	Directive 92/121/EEC	Directive 96/10/EC
Article 1(1)	Article 1, first indent				Article 1, first indent	Article 1(a)	
Article 1(2)	Article 1, second indent						
Article 1(3)			Article 1(3)				
Article 1(4) to (8)			Article 1(5) to (9)				
Article 1(9)					Article 1, sixth indent		

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Article 1(10) and (11)			Article 1(10) and (11)				
Article 1(12)			Article 1(12)		Article 1, seventh indent	Article 1(c)	
Article 1(13)			Article 1(13)		Article 1, eighth indent	Article 1(d)	
Article 1(14) to (17)				Article 2(1), second to fifth indents			
Article 1(18) to (20)				Article 2(1), sixth to eighth indents			
Article 1(21) to (23)					Article 1, third to fifth indents		
Article 1(24)						Article 1(h)	
Article 1(25)						Article 1(m)	
Article 1(26)	Article 1, fifth indent						
Article 1(27)				Article 2(1), ninth indent			
Article 2(1)	Article 2(1)		Article 2(1)	Article 1(1)			
Article 2(2)					Article 2		
Article 2(3)	Article 2(2)						
Article 2(4)	Article 2(3)						
Article 2(5), first, second	Article 2(4)(a), (b) and (c)						

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and third subparagraph							
Article 2(6)			Article 2(3)	Article 1(3)		Article 2(2)(b)	
Article 3			Article 3				
Article 4	Article 3(1)						
Article 5(1), first subparagraph	Article 3(2), first subparagraph		Article 4(1)				
Article 5(1), second subparagraph	Article 10(1), third subparagraph						
Article 5(2)			Article 4(2), introductory sentence, (a), (b) and (c)				
Article 5(3) to (7)			Article 10(1) to (5)				
Article 6(1)	Article 3(2), first subparagraph, third indent and second subparagraph						
Article 6(2)	Article 3(2)a						
Article 7(1) and (2)			Article 1(10), second subparagraph and Article 5(1) and (2)				
Article 7(3)	Article 3(2) third, fourth and fifth subparagraphs						

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Article 8	Article 3(4)						
Article 9	Article 3(3)(a)						
Article 10	Article 3(6)						
Article 11	Article 3(7)						
Article 12			Article 7				
Article 13			Article 6(1)				
Article 14(1)	Article 8(1)						
Article 14(2)	Article 8(5)						
Article 15	Article 5						
Article 16(1) to (5)			Article 11(1) to (5)				
Article 16(6)			Article 1(10), second subparagraph				
Article 17			Article 13(2)				
Article 18			Article 18(1)				
Article 19			Article 18(2)				
Article 20(1) to (6)			Article 19				
Article 20(7)			Article 23(1)				
Article 21(1) and (2)			Article 20				
Article 21(3)			Article 23(2)				
Article 22			Article 21				
Article 23(1)			Article 8				

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Article 23(2) to (7)			Article 9				
Article 24	Article 9						
Article 25					Article 8		
Article 26			Article 13(1) and (3)				
Article 27			Article 14(2)				
Article 28	Article 7(1)						
Article 29			Article 15				
Article 30(1) to (5)	Article 12(1) to (5)						
Article 30(6)	Article 12(5a)						
Article 30(7)	Article 12(5b)						
Article 30(8)	Article 12(6)						
Article 30(9)	Article 12(7)						
Article 30(10)	Article 12(8)						
Article 31	Article 12a						
Article 32			Article 17				
Article 33	Article 13						
Article 34(1)		Article 1(1)					
Article 34(2) to (4)		Article 2(1) to (3)					
Article 35		Article 3					
Article 36		Article 4					
Article 37		Article 5					
Article 38		Article 6(1) and (4)					

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Article 39		Article 7					
Article 40				Article 3(1) to (4), (7) and (8)			
Article 41				Article 4			
Article 42				Article 5			
Article 43				Article 6			
Article 44				Article 7			
Article 45				Article 8			
Article 46				Article 2(2)			
Article 47				Article 10			
Article 48						Article 3	
Article 49						Article 4(1) to (7)(r), second subparagraph, first sentence, and (7)(s) to (12)	
Article 50						Article 5(1) to (3)	
Article 51(1) to (5)			Article 12(1) to (5)				
Article 51(6)			Article 12(8)				
Article 52(1) to (7)					Article 3(1) to (7)		
Article 52(8) and (9)				Article 3(5) and (6)	Article 3(8) and (9)	Article 5(4) and (5)	
Article 52(10)					Article 3(10)		
Article 53					Article 4		
Article 54					Article 5		
Article 55					Article 6		

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Article 56					Article 7		
Article 57	Article 11						
Article 58	Article 3(5)						
Article 59	Article 6						
Article 60		Article 8	Article 22	Article 9		Article 7	
Article 61		Article 4a					
Article 62(1) and (2)				Article 11(4) and (5)			
Article 62(3)							Article 2
Article 63				Article 11(1) to (3)			
Article 64						Article 6(1) to (9)	
Article 65			Article 12(7)				
Article 66	Article 14(2)	Article 9(2)	Article 24(3)	Article 12(2)			
Article 67	—	—	—	—	—	—	—
Article 68	—	—	—	—	—	—	—
Article 69	—	—	—	—	—	—	—
Annex I			Annex				
Annex II				Annex I			
Annex III				Annex II			
Annex IV				Annex III			
Annex V	—	—	—	—	—	—	—
Annex VI	—	—	—	—	—	—	—

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- (1) [Including, *inter alia*:]
 - consumer credit,
 - mortgage credit,
 - factoring, with or without recourse,
 - [financing of commercial transactions (including forfaiting).]
- (2) [^{F1}[^{X1}OJ L 145, 30.4.2004, p. 1.]]
- (3) Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (OJ L 141, 11.6.1993, p. 1). Directive amended by Directive 98/33/EC (OJ L 204, 21.7.1998, p. 29).
- (4) Except in the case of single-currency ‘floating/floating’ interest rate swaps in which only the current replacement cost will be calculated.

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